

# SHOOK, HARDY & BACON TOBACCO LITIGATION UPDATE

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## DUNN:

On June 30, the Indiana Supreme Court granted plaintiffs' petition for transfer and has scheduled the case for argument on September 5. Plaintiffs filed the petition for transfer in order to seek review of the Indiana Court of Appeal's opinion that overturned the trial court's order denying defendants' motion for transfer of venue from the Superior Court of Grant County, Indiana, to the Superior Court of Delaware County, Indiana.

*Dunn v. RJRN Holdings Corp., RJR, B&W, BAT, PM, PMC, Ligg, L&M, AB, AT, Loews, Lor, TI, CTR; 5/28/93; Super. Ct., IN*

## STATE OF FLORIDA:

At a hearing on July 6, the court temporarily extended the stay in the action until the court issues its final decision on defendants' motion to extend the stay. A final decision will not be entered until the parties complete briefing of the motion. Defendants filed the motion to extend the stay on June 30 and plaintiffs filed their opposition immediately prior to the July 6 hearing. The court has permitted the defendants to file a reply brief on July 10, and plaintiffs to file a response to the reply brief on July 12. The court has not scheduled another hearing on the motion to extend the stay.

As reported in Vol. 10, No. 33 of the *Tobacco Litigation Update*, the court in State of Florida entered an order on April 7 that stayed the case until July 7. Defendants requested the stay because the court in the Associated Industries case was scheduled to rule on the constitutionality of Florida's Third Party Liability Act.

In their June 30 motion, defendants requested that the stay be extended because Associated Industries has not been concluded: the State of Florida has indicated that it will appeal the June 26 ruling that granted in part and denied in part the motion for summary judgment filed by the plaintiffs. (Plaintiffs in Associated Industries are Philip Morris and several entities that conduct business in Florida.) See Vol. 10, No. 44 of the *Tobacco Litigation Update* for details of the June 26 ruling in Associated Industries.

*State of Florida, et al. v. AT, AB, RJR, RJRN, BAT, BATUS, B&W, PMC, PM, Ligg, L&M, Brooke, Loews, Lor, U.S.T., UST, CTR, TI, H&K, Brit. Amer., Dosal; 2/22/95; Cir. Ct., FL*

*Associated Industries, et al. v. State of Florida Agency for Health Care Administration; 6/30/94; Circuit Ct., FL*

## WYANDOTTE COUNTY, KANSAS, LITIGATION:

At a hearing on July 5, Judge Bukaty granted plaintiffs' motions for leave to amend to add tobacco companies as defendants in several asbestos suits pending before the District Court of Wyandotte County, Kansas. As reported in Vol. 10, No. 44 of the *Tobacco Litigation Update*, plaintiffs moved to add various tobacco companies as defendants to five individual cases; during the hearing, plaintiffs in a sixth case, Jones, were granted leave to amend their complaint to add American Tobacco as a defendant. To our knowledge, none of the proposed tobacco company defendants have received service of process of the amended complaints. Plaintiffs in the six cases are represented by the Topeka, Kansas, firm of Joseph D. Johnson, Chartered, and the Miami, Florida, firm of Ratiner, Reyes & O'Shea.

## MOTION FOR LEAVE TO AMEND TO ADD TOBACCO COMPANIES AS DEFENDANTS FILED IN MIAMI:

The Miami, Florida, law firm of Ratiner, Reyes & O'Shea has filed a motion for leave to amend the complaint to add tobacco companies as defendants to Asbell, an asbestos wrongful death suit pending in the Circuit Court of Dade County, Florida. American and Brown & Williamson are the tobacco companies plaintiff in Asbell seeks to add as defendants. To our knowledge, the court has not ruled on the motion for leave to amend. The Ratiner, Reyes firm also is counsel for plaintiffs in the suits pending in Wyandotte County, Kansas, in which plaintiffs have been granted leave to amend their complaints to add tobacco companies as defendants.

## BROIN:

Plaintiffs have requested and received an extension of time to file their brief in opposition to defendants' appeal. The brief, which previously was scheduled to be filed on July 10, is due on August 9. Defendants' appeal, pending before the Third District of the Florida Court of Appeal, is from the trial court's December 12, 1994, order that granted plaintiffs' motion for class certification.

*Broin, et al. v. PM, PM Prod., RJR, Lor, Ligg, AT, Dosal Tob., B&W, UST, TI, CTR, TMA, FL Tob./Candy Assoc., Nat. Assoc. of Tob. Dist.; 10/31/91; Cir. Ct., FL*

## ENGLE:

On July 3, defendants submitted briefs on the issues identified in the court's order of June 19 on class notice issues. In a joint brief, defendants advised the court that the cost of issuing notice to the class should be borne by the plaintiffs because it is a cost associated with bringing the litigation. Defendants also jointly submitted their proposed class notice on July 3. Philip Morris and R.J. Reynolds separately replied to the court's direction that they provide lists of the publications in which certain advertisements appeared on October 25, 1994. As previously reported, a second notice hearing is scheduled for August 28.

*Engle, et al. v. RJR, PM, Lor, AT, B&W, Ligg, Brooke Grp., Dosal, CTR, TI; 5/5/94; Cir. Ct., FL*

## PITRE:

At a status conference on June 22, the court directed plaintiffs to file by July 24 expert reports or supplemental interrogatory answers regarding treating physicians with expert opinions. The expert reports or interrogatory answers are to include opinions as to when plaintiffs' cause of action accrued. The court directed defendants to complete their discovery of the treating physicians with expert opinions by September 22. The court has scheduled another status conference for September 29 in which it will determine the manner in which the law that is applicable to Pitre will be decided.

At the status conference, plaintiffs' counsel, George Covert, contended that the asbestos co-defendants in Pitre prevent the court from applying the May 5 ruling by the Fifth Circuit Court of Appeals in the Carl Brown case. Instead, Mr. Covert contended that a ruling by the

Louisiana Supreme Court in an asbestos action, Cole, should govern any analysis of the decedent's exposure to asbestos or tobacco products. The Fifth Circuit's decision in Carl Brown held that claims asserted against cigarette manufacturers after the Louisiana Products Liability Act was enacted on September 1, 1988, are barred unless plaintiffs can demonstrate that their causes of action accrued before the Act was enacted.

*Pitre v. RJR, PM, AT, Lor, B&W, Ligg, et al.; 7/28/92; Dist. Ct., LA*

## GIBSON:

On June 30, the court entered an order granting plaintiff's motion to dismiss R.J. Reynolds. Philip Morris is now the only defendant in Gibson.

*Gibson v. PM; 6/20/94; U.S.D.C., W.D., LA*

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